Summary of NASUCA's Truth-in-Billing Petition and Reply Comments, CG Docket No. 04-208: NASUCA Ex Parte Presentation (Jan. 12, 2004).

NASUCA asks the Commission to address, in the context of its TIB proceeding, carriers' growing use of monthly line items – fees and surcharges that recover the carriers' operating costs, including costs of complying with various government regulatory programs. Such charges:

- are misleading and deceptive re: the origin of the charges in question;
- are misleading and deceptive re: the prices consumers pay for service;
- are misleading and deceptive in that many imply that they are required by the government when in fact they have never been expressly mandated or authorized;
- are misleading and deceptive because carriers' advertising does not disclose these hidden fees and charges;
- are unreasonable because they bear no demonstrable relationship to the regulatory costs they purportedly recover; and
- are anti-competitive because carriers can mask their economic inefficiencies while advertising low usage-based and monthly rates.

What NASUCA is seeking: The Commission should declare that carriers are prohibited from imposing line items *unless those charges are expressly mandated or authorized by federal, state or local regulatory action*. Regulatory surcharges should also be required to closely match the regulatory assessment they recover. If other, non-regulatory line items are not prohibited under the *TIB Order* and other Commission decisions, then the Commission should open a rulemaking to address those charges as well.

What NASUCA is *not* seeking: NASUCA is not asking the Commission to overturn prior decisions allowing carriers to recover specific assessments authorized by regulatory action through line item charges. NASUCA is not asking the Commission to ban all line items and force carriers to put all their operating costs in one lump sum rate.

Granting NASUCA's petition: Advances the pro-consumer, pro-competition goals of Communications Act. Consumers can shop among carriers for the lowest rates free from deceptive, misleading or confusing billing practices; carriers who cannot compete efficiently cannot bury their costs in monthly line items while maintaining deceptively low rates.

NASUCA's petition is consistent with the consumer protection goals and provisions of the Communications Act:

- Federal telecommunications laws require carriers' charges to be "just" and "reasonable." *See* 47 U.S.C. §§ 151. 201(b), 205(a). Wireless customers are entitled to just and reasonable charges. *See* 47 U.S.C. § 332(c)(1)(A).

- The 1996 amendments continued pro-consumer goals, *i.e.*, "to promote competition and reduce regulation in order to secure lower prices." [Note: Competition meant to reduce, not eliminate, regulation]. *See* 1996 Amendments Preamble & 47 U.S.C. §§ 254, 258, 701.

NASUCA's petition seeks to clarify and strengthen the consumer protections established in the Commission's 1999 *Truth-in-Billing Order*.

The *TIB Order* addressed, *inter alia*, consumers' confusion regarding carrier charges on monthly telephone bills and adopted "truth-in-billing" principles and guidelines to:

- ensure that consumers receive basic information needed to make informed choices in competitive telecommunications market, and

- protect consumers from unscrupulous competitors.

Both objectives are threatened by carrier line items described in NASUCA's petition.

IXCs' surcharges violate the *TIB Order*'s second principle – "Full and Non-Misleading Billed Charges" – and two implementing guidelines (billing descriptions and standardized labels for charges resulting from federal regulatory action). CMRS providers' line items violate the Commission's "full and non-misleading" principle, and guideline regarding standardized labels. All carriers' line items are subject to the "reasonable" and "nondiscriminatory" charges requirements of Sections 201 and 202 of the Act.

The *TIB Order* did not authorize the line items that are the subject of NASUCA's petition. The *TIB Order* focused on 3 types of line items that had appeared on consumer bills (at that time): (1) contributions to the FUSF; (2) the subscriber line charge (SLC); and (3) costs associated with provided local number portability (LNP).

The carriers' line items do not meet or exceed the Commission's TIB principles and guidelines.

- The IXCs' line items recover purported regulatory-related (and other) charges, with different origins applicable to different service and provider offerings, together in 1 lump sum, a practice noted by the Commission with concern in the *TIB Order*.

- The CMRS carriers' line items also recover a grab bag of purported regulatory and other costs, contrary to the Commission's concerns in the *TIB Order*.

- Line items that recover a smorgasbord of regulatory and other costs are essentially no different from the "miscellaneous" line items the Commission rejected in the *TIB Order.*

The carriers line items addressed in NASUCA's petition are not authorized by the 2002 *Contribution Order*.

The *Contribution Order* made clear that it is inappropriate for carriers to characterize line items recovering administrative and other costs as "regulatory" fees.

The *Contribution Order* authorized carriers to recover administrative costs associated with the collection of USF charges either in rates or other line item charges – the Commission should make clear that the "administrative costs" recoverable in rates or line items was limited to USF costs, not any and all operating costs.

The Commission's *LNP 3rd R&O* authorized line items to recover carriers' direct costs associated with providing number portability – it did not authorize the wireless line items NASUCA challenges.

The problem with CMRS providers' line items purportedly recovering LNP costs are: (1) the line items were imposed before wireless customers could utilize number portability; (2) lumped LNP costs together with various other costs (some regulatory and some not); and (3) the line items overrecover CMRS carriers' direct costs of implementing LNP.

The Commission's E911 orders have not authorized carriers to recover E911 implementation costs through line items.

The Commission's *E911 2d R&O* did not authorize carriers to recover Phase I costs through rates and surcharges – only through rates.

The carriers' disclaimers heighten, not lessen, customer confusion, by describing costs imposed by government but characterizing their line items as not mandated by government.

Even if not specifically prohibited by the *TIB Order*, carriers' surcharges and pricing strategy are inherently misleading and thus unreasonable and unjust under Sections 201 & 202 of the Act.

The Commission's *2000 Advertising Joint Policy* further suggests that the carrier line items in question are unjust and unreasonable.

- Same observations re: deceptive advertising apply to deceptive billing practices.
- Line items violate the "net impression" standard in the *Advertising Joint Policy.*
- Prohibiting line items not mandated or authorized by federal,, state or local government does not violate the 1st Amendment.

The surcharges are excessive and bear no demonstrable relationship to the regulatory costs they purport to recover.

Competition is not the cure for misleading line items and may be part of the problem.